ASSIGNMENT OF ERRORS
and
BRIEF FOR PLAINTIFF IN ERROR

[redacted]

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

MARIANNE J. BALDY, by her next friend W. B. PRITCHARD,
Plaintiff in error,
v.
JOHN H. HUNTER, as executor of EDWARD H. W. HUNTER, Deceased,
Defendant in error.

No. 241.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

ASSIGNMENT OF ERRORS.

Afterwards to-wit: On the first Monday of February, in this same term, before the Justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Marianne J. Baldy who sues through her next friend, W. B. Pritchard, by Pope Barrow, Samuel R. Church and Francis H. Stephens, her attorneys, and say that in the record and proceedings aforesaid, there is manifest error in this to-wit:

First:—In deciding, holding, and adjudging that the decisions of this Court in the case of McWhorter *v.* Tarpley *et al.*, 54 Ga., 291; Nelms *v.* Summers, *Ibid.*, 605, and in

other cases, the doctrine of which is recognized in the case of McCook *v.* Harp, 81 Ga., 237, are binding upon this Court, and it is not constrained to follow the decisions of the Supreme Court of the United States in cases involving the same or similar questions.

Second:—In deciding, holding, and adjudging that, according to the above-cited Georgia decisions, a guardian who, during the war between the States, in good faith invested the funds of his ward in bonds of the Confederate States under an order of the judge of the Superior Court properly obtained under then existing laws, was protected thereby and is not liable to the ward for the value of the money so invested.

Third:—In affirming the judgment of the court below, to wit, the Superior Court of Chatham County, Georgia, in which a judgment was entered for the defendant against this plaintiff.

Fourth:—In affirming the judgment of the court below, to wit, the Superior Court of Chatham County, Georgia, in refusing to grant a new trial to this plaintiff, overruling the motion of this plaintiff for a new trial.

Fifth:—In affirming the judgment of the court below, to wit, the Superior Court of Chatham County, Georgia, overruling the motion for a new trial of this plaintiff and thereby affirming the charge to the jury in these words:

"Following the decision of the Supreme Court of Georgia, I charge you that the investment by Dr. Hunter, the guardian, in Confederate bonds was a lawful investment. You are therefore instructed to find a verdict for the defendant."

Sixth:—In affirming the judgment of the court below, to wit, the Superior Court of Chatham County, Georgia, in

overruling the motion for a new trial of this plaintiff whereby was affirmed and approved the refusal of said judge of the Superior Court of Chatham County to charge the jury that—

"An investment by a guardian of money of his ward during the Confederate war and while both guardian and ward were residing within the Confederate territory in bonds of the Confederate States was unlawful and the guardian is responsible to the ward for the sum so invested;"

this plaintiff having requested the judge of said Superior Court to instruct the jury in the foregoing language, and said request having been refused and this plaintiff having excepted thereto and assigned error thereon in her motion for a new trial.

Seventh :—In affirming the judgment of the court below, to wit, the Superior Court of Chatham County, Georgia, in overruling this plaintiff's motion for a new trial whereby was affirmed and approved the refusal of the judge of the Superior Court to charge the jury that—

"The Constitution of the United States, article 6, paragraph 2, declares that the Constitution of the United States and the laws of the United States which shall be made in pursuance thereof and all treaties made or which shall be made under the authority of the United States shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."

"The code of this State in its very first utterance says that the supreme law in this State is the Constitution of the United States. The Supreme Court of the United States is the ultimate judge of the question whether a State statute is in conflict with the Constitution of the United States. That court has decided that an act of a State Legislature passed during the Confederate war, authorizing a guardian to invest the money of his ward in Confederate bonds is in conflict with the Constitution of the United States and void."

"The Courts of this State are bound by that construction of the Constitution."

"I charge you, therefore, that no act of the legislature of this State, passed during the late war, authorizing a guardian to invest the funds of his ward in Confederate bonds, and no order of any court of this State granted in pursuance of said act of the legislature would authorize such investment."

This plaintiff having requested the judge of said Superior Court to instruct the jury in the foregoing language, and said request having been refused, and this plaintiff having excepted thereto and assigned error thereon in her motion for a new trial.

Wherefore this plaintiff prays that the said judgment of the said Supreme Court of Georgia in favor of the said defendant and against this plaintiff may be reversed.

POPE BARROW,
SAMUEL R. CHURCH,
FRANCIS H. STEPHENS,
Attorneys for the Plaintiff in Error.

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v.
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} No. 241.

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BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

On May 11, 1857, Edward H. W. Hunter, as guardian of Marianne J. Baldy, the plaintiff in error, received from the Administrators of her father's estate, one thousand nine hundred and forty-seven dollars and thirty-eight cents ($1,947.38) on account of her distributive share of his estate. It was received in the shape of promissory notes, on different individuals. Some of them fell due in 1857, some in

1858, and there was also an execution, which was due immediately. Marianne was entitled to one-eighth of her father's estate. The total amount received by her guardian as her share, was two thousand four hundred and eighty dollars and sixty-four cents ($2,480.64).

On January 1, 1859, he had in his hands as guardian for her, two thousand three hundred and forty-seven dollars and eighteen cents, ($2,347.18). (Printed Record, page 6.)

On December, 16, 1861, an Act of the Georgia Legislature, was passed and assented to by the Governor in the following words:

"An Act to authorize Guardians, Trustees, Executors, and Administrators to invest in Confederate States Bonds, and in lands and negroes."

"Section 1. The General Assembly of the State of Georgia, do enact, That Guardians, Trustees, Executors, and Administrators are hereby authorized to invest any funds held by them as such Guardians, Trustees, Executors, and Administrators, in the bonds issued by the Confederate States of America, or in lands and negroes; Provided that an order to that effect be first obtained from the Judge of the Superior Court, who is hereby authorized to consider and pass such applications, either in term time or vacation."

Section 2 repeals conflicting laws.

Assented to December 16, 1861. (Ga. Laws, 1861, page 32.)

On April 25, 1863, Edward H. W. Hunter, as guardian of Marianne J. Baldy, applied to the judge of the Superior Court of Jefferson County, Georgia, for an order authorizing him to invest one thousand dollars ($1,000) of his ward's money in the bonds of the Confederate States, and on that day the judge granted the order, giving leave to the guardian to invest said sum of one thousand dollars ($1,000) in Confederate States bonds. (Printed Record, page 13.)

On the same day, April 25, 1863, at Savannah, the said

Hunter as guardian, invested twelve hundred dollars ($1,200.00) of his ward's money in 8 per cent bonds of the Confederate States, and charged her in his returns with the twelve hundred dollars ($1,200.00). (Printed Record, page 10.)

On March 12, 1866, an Act of the Legislature of Georgia was approved, which is in the following words:

"An Act for the relief of Administrators, Executors, Guardians, and Trustees, and for other purposes."

"Section 1. Be it enacted by the General Assembly of the State of Georgia, and it is hereby enacted by the authority aforesaid, that all Administrators, Executors, Guardians and Trustees, who in pursuance of any order, judgment or decree of any Court having jurisdiction or of any law of this State did *bona fide* invest the funds of the estate they represent in the bonds, notes, or certificates of the State of Georgia, or of the Confederate States of America, be and they are hereby relieved from all the penalties of mismanagement, misappropriation or misapplication of the funds of the estates they represent, by reason of such investment."

"That all Administrators, Executors, Guardians and Trustees, claiming the benefit of the provisions of this Act, shall before making their final settlement, make oath before the Ordinary of the County in which they have heretofore made their returns, showing what funds of the estates they represent, they have so invested, and shall also swear that the notes, bonds or certificates, so held by them are the same kind of currency which they received for the estates they so represent."

Section 2 repeals conflicting laws.

Approved 12th of March, 1866. (Acts 1865 and 1866, page 85.)

On July 2, 1866, the guardian, Hunter, made oath before the Ordinary of Jefferson County, that he did invest twelve hundred dollars ($1,200.00) of the funds of Marianne J. Baldy, in 8 per cent. bonds of the Confederate States, in the

year 1863, and that the bonds so held by him were the same kind of currency which he received, for her estate. (Printed Record, page 11.)

Marianne J. Baldy was born February 21, 1854.

Her mind became seriously impaired in the summer of 1872.

This disarrangement continued through the years 1873, and 1874, and early in 1875, during the month of February, she became totally insane. (Printed Record, pages, 3 and 4 and 5.)

This insanity continues to the present day, and she is now, and has been for many years an inmate of the Lunatic Asylum at Milledgeville, Georgia. Since 1872, she has not been mentally capable of understanding the nature and import of any business transaction whatever. (Printed Record, page 4.)

She was twenty-one years of age February 21, 1875.

On March 15, 1875, her guardian made what purported to be a settlement with her, she being represented by William H. Baldy, under a power of attorney purporting to have been executed by her February 22, 1875. (Printed Record, page 13.)

This power of attorney was objected to on the trial, and the objection was withdrawn, and the paper allowed to go in evidence upon the statement of the defendant's counsel, that she should not be bound by any settlement made under it. (Printed Record, page 13.)

William H. Baldy stated that when he gave the receipt to the guardian, he was not authorized to make a final settlement for Marianne. (Printed Record, page 14.)

On December 4, 1876, Edward H. W. Hunter, was granted letters of dismissal from his guardianship, by the Ordinary of Jefferson County, Georgia. (Printed Record, page 15.)

The Confederate bonds were never delivered or tendered

to the plaintiff by the guardian, or his executors, nor did she ever ratify, the investment of her money in such bonds.

It was agreed between counsel for the plaintiff and the defendant, in open court during the trial of the case, and approved by the court, that the only question at issue was the lawfulness or unlawfulness of the investment by the guardian of the twelve hundred dollars ($1,200) in Confederate bonds. (Printed Record, pages 27 and 29.)

The court decided that it was a lawful investment and instructed a verdict for the defendant. (Printed Record, page 29.)

The jury found for the defendant, and a decree was entered up accordingly. (Printed Record, page 29.)

The plaintiff thereupon made her motion for a new trial upon the ground that:

First:—The verdict is contrary to law.

Second:—The verdict is contrary to the evidence.

Third:—The court erred in instructing a verdict for the defendant.

Fourth:—The court erred in charging the jury that the investment in Confederate bonds was a lawful investment.

Fifth:—Because the court erred in refusing to give in charge to the jury the request of the plaintiff's counsel as follows:

"An investment by a guardian of money of his ward, during the Confederate war, and while both guardian and ward were residing within the Confederate territory, in bonds of the Confederate States, was unlawful, and the guardian is responsible to the ward for the sum so invested."

Sixth :—Because the court erred in refusing to charge the jury when requested to do so by the plaintiff's counsel as follows :

"The Constitution of the United States Article 6, paragraph 2, declares that the Constitution of the United States, and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."

"The code of this State, in its very first utterance, says that the supreme law in this State, is the Constitution of the United States. The Supreme Court of the United States is the ultimate judge of the question, whether a State statute is in conflict with the Constitution of the United States. That Court has decided that an Act of a State Legislature, passed during the Confederate war, authorizing a guardian to invest the money of his ward in Confederate bonds, is in conflict with the Constitution of the United States and void.

The courts of this State, are bound by that construction of the Constitution.

I charge you, therefore, that no Act of the Legislature of this State passed during the late war, authorizing a guardian to invest the funds of his ward, in Confederate bonds, and no order of any court of this State granted in pursuance of said Act of the Legislature would authorize such investment." (Printed Record, pages 30 and 31.)

This motion for a new trial was overruled by the Judge of the Circuit Court, who tried the case, March 14 1895. (Printed Record, page 31.)

Under the law of Georgia, which authorizes a writ of error from a decision upon a motion for a new trial, the case was taken to the Supreme Court of Georgia by the plaintiff. At the March term, 1896, this case was argued and determined in the Supreme Court of Georgia, and the

judgment of the court below was affirmed. (Printed Record, pages 32 and 33.)

The plaintiff then sued out a writ of error from this court, which was allowed by the Hon. Thomas J. Simmons, Chief Justice of the Supreme Court of Georgia. (Printed Record, pages 34 and 36.)

SPECIFICATION OF ERRORS.

We assert and intend to urge that the Supreme Court of the State of Georgia erred :

First :—In holding that it was bound to follow the previous decisions of that Court, namely; McWhorter *v.* Tarpley, 54 Ga., 291, Nelms *v.* Summers, 54 Ga., 605, and that it is not constrained to follow the decisions of the Supreme Court of the United States, in cases involving the same or similar questions, the question involved being whether or not a State statute which authorized the investment by a guardian of his ward's money in the bonds of the Confederate States was repugnant to the Constitution of the United States, the decisions of the Supreme Court of Georgia, being in favor of the validity of said State statute, and the decision of the Supreme Court of the United States being against the validity of the same. (Printed Record, page 32.)

Second :—In deciding that a guardian who invested the funds of his ward in bonds of the Confederate States, during the war between the States, under an order of the judge of the Superior Court, is not liable to the ward for the value of the money so invested. (Printed Record, page 32.)

Third :—In affirming the judgment of the Superior Court of Chatham County, Georgia, overruling the motion for a new trial made by the plaintiff, in said Superior Court, which

motion was based upon the ground, among others, that the verdict was contrary to law, the verdict being for the defendant under instructions from the Court pursuant to his decision that the guardian's investment in Confederate bonds was a lawful investment. (Printed Record, page 30.)

Fourth :—In affirming the judgment of the Superior Court of Chatham County, Georgia, overruling the motion for a new trial made by the plaintiff in said Superior Court, which motion was based upon the ground, among others, that the verdict was contrary to the evidence, the evidence showing that the guardian took credit in his settlement with his ward for twelve hundred dollars ($1,200) of her money invested in Confederate bonds. (Printed Record, pages 30 and 10.)

Fifth :—In affirming the judgment of the Superior Court of Chatham County, Georgia, overruling the motion for a new trial, made by the plaintiff in said Superior Court, which motion was based upon the ground, among others, that the Court erred in instructing a verdict for the defendant, the Court having instructed such verdict, because he held that the investment by the guardian in Confederate bonds was a lawful investment, by which affirmance said instructions were approved. (Printed Record, page 30.)

Sixth :—In affirming the judgment of the Superior Court of Chatham County, Georgia, overruling the motion for a new trial made by the plaintiff, in said Superior Court, which motion was based upon the ground, among others, that the Court erred in charging the jury as follows:

"Following the decision of the Supreme Court of Georgia, I charge you that the investment by Dr. Hunter, the guardian, in Confederate bonds was a lawful investment. You are therefore, instructed to find a verdict for the defendant."

The judgment of the Supreme Court of Georgia affirmed and approved those instructions. We assert that this was error. (Printed Record, page 30.)

Seventh :—In affirming the judgment of the Superior Court of Chatham County, Georgia, overruling the motion for a new trial made by the plaintiff, in said Superior Court, which motion was based upon the ground, among others, that the Court erred in refusing to give the following instructions to the jury, which were requested by plaintiff's counsel:

"An investment by a guardian of money of his ward, during the Confederate war, and while both guardian and ward were residing within the Confederate territory, in bonds of the Confederate States, was unlawful, and the guardian is responsible to the ward for the sum so invested."

The refusal to give these instructions was affirmed by the Supreme Court of Georgia. We assert that the refusal to give the above instruction was manifest error. (Printed Record, page 30.)

Eighth :—In affirming the judgment of the Superior Court of Chatham County, Georgia, overruling the motion for a new trial made by the plaintiff, in said Superior Court which motion was based upon the ground, among others, that the court erred in refusing to give the following instructions to the jury, which were requested by counsel for the plaintiff.

"The Constitution of the United States, Article 6, paragraph 2, declares that the Constitution of the United States and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

The code of this State in its very first utterance says that the supreme law in this State is the Constitution of the United States. The Supreme Court of the United States is the ultimate judge of the question whether a State statute is in conflict with the Constitution of the United States. That Court has decided that an act of a State legislature passed during the Confederate war authorizing a guardian to invest the money of his ward in Confederate bonds is in conflict with the Constitution of the United States and void.

The courts of this State are bound by that construction of the Constitution.

I charge you, therefore, that no act of the Legislature of this State passed during the late war, authorizing a guardian to invest the funds of his ward in Confederate bonds, and no order of any court of this State granted in pursuance of said act of the Legislature would authorize such investment."

The refusal to give the above instructions, and the affirmance of that refusal by the Supreme Court of Georgia, was manifest error. (Printed Record, pages 30 and 31.)

BRIEF.

First.

There was but one issue between the plaintiff and the defendant in this case. The sole question is, whether it was lawful or unlawful for a guardian to invest his ward's money in Confederate bonds, (*a*) (Printed Record, page 29.)

Every other question was eliminated from the case.

Pettit *v.* Macon, 95 Ga. 645.

(*a*) The Statute of Limitation of 1869 was not involved.
Hobbs *v.* Cody, 45 Ga. 478.
Windsor *v.* Bell, 61 Ga. 671.

No Statute of Limitation runs against an insane person in Georgia.
Code of 1895, Sec. 3779.

The dismissal of the guardian by the Ordinary is not binding upon her, and is illegal and void in so far as it affirms the Confederate investment.
Code of Georgia, Secs. 2588. 3286. 4843. 4866.
Horn *v.* Lockhart, 17 Wall, 573.

Second.

An investment by a guardian of money of his ward in bonds of the Confederate States of America was unlawful, and he is not entitled to a credit in a settlement with his ward for the sum so invested.

No Act of the Legislature of Georgia authorizing such investment, and no order of any court granted by authority of such act would make it a lawful investment.

Horn *v.* Lockhart, 17 Wall, 570.
Lamar *v.* Micou, 112 U. S., 452, 476.
Chancely *v.* Bailey, 37 Ga. 532.
Wallace *v.* Cannon, 38 Ga. 199.

Third.

The fact that the guardian acted in good faith is irrelevant and immaterial.

Sprott *v.* U. S. 20 Wall., 459, 463.

Fourth.

The guardian is bound to account for the money in gold. He has failed to show that the gold which he collected in 1857, 1858 and 1859, was changed into Confederate money.

King *v.* Hughes, 52 Ga. 600.
Johnson *v.* McCullough, 59 Ga. 212.

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